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Letter Opinion No. 62-58-L

May 16, 1962

REQUESTED BY: Honorable Harry Ackerman
Pima County Attorney

OPINION BY: The Attorney General

QUESTION:

Is it lawful for any of the following classes of persons to be appointed and to function as private process servers pursuant to Rule 4(d) of the Rules of Civil Procedure and to personally collect and retain fees for service of process arising out of the Superior Court of the State of Arizona:

1. Constables of precincts including a part of a city?
2. Deputy Constables of precincts including a part of a city?
3. Regular full time Deputy Sheriffs?

CONCLUSION: No.

The area in which the above indicated questions fall has been treated in several pertinent opinions of the Attorney General. Amongst these is Opinion No. 51-287, rendered on November 2, 1951, to Mrs. Jewel W. Jordan, State Auditor. Another of these is the opinion of June 20, 1945, rendered to Mr. F. M. Gold, County Attorney, Flagstaff, Arizona.

You have favored us with a copy of an opinion of Mr. Charles N. Ronan, County Attorney, Maricopa County Courthouse, Phoenix, Arizona, by Mr. Howard P. Leibow.

Mr. Leibow's opinion, that the Constable's job, precisely like the Deputy Sheriff's job, requires, during his working hours, exclusive attention to the work for which he receives his salary, and that his receipt of fees for services rendered as a private process server is within the prohibition of Article 22, Section 17, Constitution of the State of Arizona, represents our view of the law.

This solves the question of the identity of the duties of Constables and Deputy Sheriffs. We do not think this is a substantial question in view of the connection expressed in the Constitutional provision. We are reluctant to vary the opinions, above indicated, which are in conformity with the rather definite prohibition of the Constitutional provision cited.

The answers to your questions (subparagraphs 1 and 3) above indicated, are in the negative as to each thereof: It would be unlawful for any of the persons named to receive extra fees as private process servers, under Rule 4(d) of the Rules of Civil Procedure of Arizona.

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The only remaining question relates to the Deputy Constable, referred to in subsection 2 of the question paragraph. We find no provision in the Revised Statutes constituting the office of "deputy constable". We think, perhaps, that any such office or officer draws his authority from some other connection, e.g., a deputy sheriff, supplied for civil work, aid to the constable, by the sheriff's office. Perhaps, within a city, his authority is, to a territorially limited degree, from the police department.

If such an officer, deputy constable, is under the aegis of the sheriff's office, and is a deputy sheriff, he is within the prohibition as such deputy sheriff. If he is not a public officer, I do not see how he claims the title "deputy constable". If the title is not an usurpation, therefore, the deputy constable very probably is within the prohibition, even as are the other two classifications.

Since the respective times at which the opinions have been rendered on this subject, the various statutes have been amended. The most recent amendment of Arizona Revised Statutes § 11-445 was accomplished by Chapter 139, Laws of 1962. Upon the questions presented by your letter, we do not understand the amendments to be critical to the opinions, nor to this opinion.

All of the questions are answered in the negative.

ROBERT W. PICKRELL
The Attorney General

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